

State Government Vs. KamruddIn Imamoddin

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Court : Mumbai

Decided On : Aug-05-1955

Reported in : 1956CriLJ263

Judge : Bhutt and ;Tambe, JJ.

Appellant : State Government

Respondent : KamruddIn Imamoddin

Judgement :

1. This appeal of the State Government is directed against the acquittal of the accused-respondent Kamruddin of an offence punishable under Section 363, Penal Code, for kidnapping Kum. Jai (P. W. 3) alleged to be 15 years of age on, 28-4-1954.

2. The prosecution case was that on 28-4-1954 Kum. jai daughter of Laxman (P. W. 2) was sitting at the 'bangai' of Laxman Kalar (P. W. 8). The respondent made signs to her calling her to him. She went to the respondent who offered her inducement of giving her ornaments and clothes and requested her to accompany him to Suknegaon.

She declined. The accused thereupon caught her by the hands, dragged her for some distance, physically lifted her up, put her in a 'rengi' (a small bullock-cart without a roof) and took her away with him to Suknegaon. He kept her in his house for three days, and during that period he had sexual intercourse with her.

3. At the relevant time Kum. Jai was staying with her brother Narayan. On being informed by Narayan, Laxman (P. W. 2) reported the matter to the police on 30-4-1954. Exhibit P-2 is that report. During investigation the station-officer, Moregaon found Kum. Jai in the house of the respondent. The respondent was therefore charged with the commission of an offence punishable under Section 363, Penal Code.

4. The respondent in his defence pleaded not guilty to the charge. He further stated that he had not kidnapped Kum. Jai, She had met him at Suknagaon near his 'khalla' and requested him to accompany her to Wani. At that time She informed him that she had a quarrel with her brother and therefore she had come to Suknagaon to stay with her sister. When he was having such talk with Kum. Jai the sub-inspector of Police arrived on the spot and arrested him.

5. The trying Magistrate found that the prosecution case of kidnapping and abduction was not proved. The evidence tendered by the prosecution in support of their case was incredible and no reliance could be placed on it. On these findings the trying Magistrate gave benefit of doubt to the respondent and acquitted him. Hence this appeal by the State Government.

6. The learned Government Advocate for the State urges that on his own finding the trying Magistrate was in error in acquitting the respondent. Reliance is placed on the following observations made by the learned Magistrate in paragraph 5 of his judgment:

I think she willingly went with him in the hope of getting good clothes and ornaments which were promised to her. It is quite clear from her evidence that she had gone out of her brother's house with the accused Kamruddin without anybody exercising any compulsion on her.

7. In our opinion, there would have been force in this contention if the judgment of the trying Magistrate had rested only at that finding; but the learned Magistrate has in paragraph 8 of the judgment observed:

The account thus given by the accused himself through his defence witnesses about the presence of Jai near his house is not an incredible story and it is quite possible that it is at any rate partially true.

8. It would thus appear that the learned Magistrate has believed the defence evidence to the effect that Kum. Jai had come to Suknagaon of her own accord and that she was not induced by the respondent to accompany him there.

9. It is difficult to reconcile these two findings. We therefore proceed to discuss afresh the following evidence on which reliance is placed by the learned Government Advocate in support of his contention:

(a) Oral evidence of Laxman (P. W. 2), Kum. Jai (P. W. 3), station-officer Sonaji (P. W. 4), Dama (P. W. 5) and Laxman Kalar (P. W. 8). It is submitted that even the testimony of Kum. Jai is sufficient to sustain a charge under Section 363 Penal Code, against the respondent. The prosecution case is not of rape, and even the uncorroborated testimony of Kum. Jai could be relied upon. Reliance is placed on - 'Motiram v. The State' (S) AIR 1955 Nag 121 and - 'Rameshwar Kalyan Singh v. State of Rajasthan' : [1952]1SCR218

(b) Seizure of the 'sari' (article A) alleged to have been given to Kum. Jai by the respondent and seizure of the 'sari' (article B) belonging to Kum. jai from the house of the respondent as also the seizure of the ear-ring (article C) from the person of Kum. Jai alleged to have been given to her by the respondent.

(c) Exhibit P-9, certified copy of an entry in the 'kotwar' book of Moregaon, and evidence of Shravan (P. W. 9) for proving that Kum. Jai was 15 years of age at the relevant time.

10. Kum. Jai (P. W. 3) has deposed that on the date of the incident she was sitting at the 'bangai' of Laxman Kalar (P. W. 8). At that time the respondent waved his hand and called her. He said to her: 'come here. I will tell you a story'. She went to him. He asked her to accompany him to Suknagaon, promising to prepare an ornament for her and give her a 'sari'. She refused to go with him. The respondent thereupon caught her by the hand, took her for a distance of 5 or 6 fields and then

lifted her up and put her in a 'rengi'.

After yoking the bullocks to the 'rengi', he threatened to kill her if she would refuse to go with him. At midnight they reached Suknagaon. The respondent's wife was in the house. The witness shouted whereupon the respondent threatened to cut her. Thereafter, the respondent had sexual intercourse with her. He had also sexual intercourse with her next day.

11. In her cross-examination, she has stated that when the respondent had caught hold of her by the hand at Moregaon and was dragging her, her bangles were broken. As a result of this her hand was injured and it was bleeding. Her clothes were also torn. She was shouting when she was being dragged. Dr. Lilavati Landge (P. W. 6) who examined Kum. Jai, deposes that there were no injuries on her person to show any struggle or resistance on her part. The evidence of Kum. Jai on this point cannot, therefore be accepted.

12. Further, when Kum. Jai was confronted with her statement before the police to the effect that the place from where the respondent had induced her to go with him to five or six fields from the village she admitted that she had made the statement. This statement is clearly inconsistent with her statement in examination-in-chief that she was induced to go with the respondent while she was sitting on 'bangaal' of Laxman Kajar's house,

13. Moreover, we find it difficult to believe that the respondent had sexual intercourse with Kum. Jai against her will in his own house while his wife was staying there. It also appears strange that even though Kum. Jai was dragged from the house of Laxman for a distance of four or 5 fields the prosecution could not find a single witness who had seen her being dragged.

14. True, in law no corroboration to the story deposed to by Kum. Jai is required to base a charge against the respondent of an offence punishable under Section 363, Penal Code. But in view of the aforesaid unnatural character of and the contradiction in her testimony we do not consider it safe to place reliance on it unless it is corroborated by independent evidence.

15. The evidence of Laxman (P. W. 2) is of no avail to the prosecution. He was not present at the spot. All that he has deposed to is that on receipt of information from his son Narayan about the disappearance of Kum. Jai he had made the report to the police.

16. Dama (P. W. 5) deposes that on a certain day he had seen Kum. Jai going along with the respondent Kamruddin by Wani road on foot. The respondent was walking ahead and Kum. Jai was following him at a distance of about a foot. The evidence of Kum. Jai is that she was being taken in a 'rengi'. This evidence of Dama thus hardly supports the prosecution case.

Further, in his cross-examination, Dama has stated that the date on which he had seen the respondent and Kum. Jai going together by the Wani road was the Ramnavmi day. Ramnavmi in that year was on 11-4-1954. The relevant date in this case is 28-4-1954. Thus, this evidence, even if true, is of no relevance for purposes of this case

17. The evidence of Laxman Kalar (P. W. 8) is only to the effect that he had seen Kamruddin waving his hand and calling Kum. Jai, and thereafter Kum. Jai going and meeting with the respondent. He does not know what happened thereafter. He has stated that he had then yoked his 'rengi' and gone away. In his cross-examination he has admitted that when the respondent had waved his hand to Kum. Jai he had not suspected anything, because he knew that the respondent was a person who was behaving well in the village.

According to this witness, the respondent was formerly residing in Moregaon and had shifted to Suknagaon about a couple of weeks before the date of the incident. This evidence is hardly of any assistance to prove the fact that Kum. Jai had accompanied the respondent on the date of the incident. The evidence of this witness therefore does not afford any corroboration to the testimony of Kum. Jai to the effect that she was induced by the respondent to go away with him.

18. The evidence of station-officer Sonaji (P. W. 4) no doubt establishes that when he visited, the house of the respondent at Suknagaon and Questioned the respondent about Kum. Jai, the respondent called out for her and she came out

from inside the house of the respondent. The witness thereafter seized the sari (article A) alleged to have been given to Kum. Jai by the respondent from her person and the sari (article B) belonging to Kum. Jai from inside the house.

He also seized the ear-ring (article C) alleged to have been given by the respondent to Kum. Jai. We see no reason why the evidence of this witness should be disbelieved. It finds support in the testimony of Maroti (P. W. 7) who had accompanied him.

19. As against this there is evidence of Mohammad Nijamul Hak (D. W. 1) and Ramchandra (D. W. 2) who depose that the sub-inspector (P. W. 4) had come to the spot Just when Kum. Jai had come to the house of the respondent. We see no reason why the testimony of these two witnesses should be preferred to that of the sub-inspector and Maroti (P. W. 7). But, even accepting the evidence of the sub-inspector it only establishes that when he went to the house of the respondent on 1-5-1954 Kum. Jai was in the house of the respondent.

This would only go to show that the prosecution has proved that Kum. Jai had disappeared from Moregaon since 28-4-1954 and was found in the house of the respondent on 1-5-1954. But) this is not sufficient to prove that she was induced by the respondent to go with him from Moregaon to Suknagaon.

20. Further, even assuming for a moment that the respondent had induced Kum. Jai to accompany him, the offence punishable under Section 363 is not brought home to him the respondent. The prosecution must further prove that on the date of the incident, i.e., on 28-4-1954, Kum. Jai was under eighteen years of age.

21. On this point reliance is placed by the prosecution on Exhibit P-9, certified copy of an entry in the 'kotwar' book of Moregaon. It is as follows;

Date of Name of the father, Boy. Girl.

birth or grand-father of the

death new born.

10-9-1939. Laxman Bala X 1

Katavade Jai

29-10-39.

22. True, the entry shows that the name of the girl born to Laxman on 10-9-1939 is Jai, but, in our opinion, the name 'Jai' written on 29-10-1939 is not admissible in evidence without there being independent evidence to prove it. The Birth and Death Register is no doubt a document within the meaning of Section 35, evidence Act and is therefore relevant and has evidentiary value. But this does not mean that each and every entry made in that register is admissible in evidence.

Only such entries as are made therein by persons in the discharge of their official duty are admissible. The relevant rules do not show that any duty is enjoined on the person concerned to note the name of the child born. Lord Parker of Waddington in delivering the judgment of the Judicial Committee of the Privy Council in - 'Rai Bhaiya Dirgaj Deo Bahadur v. Beni Mahto' AIR 1917 PC 197 observed at page 197 (1):

Now clearly this register is an official document, and therefore it is admissible in evidence under Section 35 of the Indian Evidence Act. It may be possible that in the case of such a document if it could be shown that any particular part was in excess of the official duty by reason of which it came into existence, that part might not be admissible, but no attempt has been made to show this in the present case.

In the present case it has been shown that the name of 'Jai' was written in Ex. P-9 in excess of the official duty imposed on the person maintaining the register. This part of Exhibit P-9, is, therefore, inadmissible in evidence unless it is established by independent evidence. The entry was made on 29-10-1939. The person who has made it is not examined. Shravan (P. W. 9) who is examined in connection with Exhibit P-9 admits that he did not know who had made that entry in the register.

Thus all that it can be said is that the prosecution has proved that a girl was born to Laxman on 10-9-1939. But this is not sufficient to establish that that girl was Jai.

A mere entry in a Birth and Death register to the effect that a daughter was born to a person without any statement as to the identity of the girl is not sufficient to prove the birth of a particular person. The identity of that person has to be fully established by other evidence: - 'Hemanta Kumar v. Alliantz Und Stuttgarter Life Insurance Co. Ltd.' : AIR1938 Cal120 (D) and - 'Biseswar Misra v. The King' AIR 1949 Ori 22.

Laxman has two other daughters. The prosecution should therefore have led other evidence in respect of the age of Kum. Jai and connected it with the entry in the register. Her father was examined as P. W. 2, but no questions were put to him to prove the age of Kum. Jai. Shevanti (D, W. 5) sister of Kum. Jai was examined as a witness for the defence but no questions were put to her also to prove the age of Kum. Jai. Thus, in our opinion, the prosecution has failed to prove that Kum. Jai was under the age of 18 years on the date of the incident.

23. The result is that the prosecution has failed to bring home an offence punishable under Section 363, Penal Code, to the respondent. The acquittal is upheld and this appeal is dismissed.

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